

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-39433 of 2015

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Date of decision:29.2.2016

Manmeet

...Petitioner

v.

State of Haryana and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. K.P.S. Virk, Advocate for the petitioner.

Mr. Himmat Singh, Deputy Advocate General, Haryana for
the respondent-State.

for Ms. Neha Rathi, Advocate Mr. Sanjeev K. Panwar, Advocate
respondents No.5 and 6.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C.
for issuing directions to official respondents No.1 to 4 to register FIR
against respondents No.5 and 6 for the offences under Sections 323, 324,
325, 342, 506 and 120-B IPC in the interest of justice.

Notice of motion was issued in this case.

Mr. Himmat Singh, learned Deputy Advocate General, Haryana
has put in appearance on behalf of the respondent-State and Ms. Neha
Rathi, learned Advocate appearing for Mr. Sanjeev K. Panwar, Advocate has
appeared for respondents No.5 and 6 and contested this petition.

I have heard learned counsel for the parties as well as learned

Deputy Advocate General, Haryana and have gone through the record.

At the time of arguments, learned counsel for the petitioner again requested that FIR be registered against respondents No.5 and 6 as the Police officials are not taking any action against the private respondents.

I have perused the reply filed by the State in which it has been stated that Manmeet-petitioner made a complaint against Vijay Kaushik-respondent No.5 to various authorities levelling therein allegations that respondent No.5 had accepted money amounting to ₹4 Lacs and eight blank cheques from him for getting to provide him job appointment as Sub Inspector in the Food and Supplies Department and further alleged that neither the amount was refunded nor the job has been provided. Inquiry of this complaint was made by Sub Inspector Kailash Chand, In-charge Police Post, Mandi Safidon and the allegations were found false and frivolous. Thereafter, on 5.10.2015, an application (Annexure-P.2) by mother of the petitioner, namely, Smt. Madhubala was received at Police Post, Mandi Safidon. In this regard DDE No.24 dated 5.10.2015 was also recorded. The inquiry was made. The patient was admitted in General Hospital, Jind in injured condition. Thereafter, on the complaint dated 16.10.2015, Annexure-P.4 detailed inquiry into the matter was carried out. On inquiry allegations levelled against private respondents No.5 and 6 were found false and frivolous. During the course of inquiry proceedings location of mobile phones of Manmeet-petitioner, Ravinder-respondent No.6 and Vijay Kaushik-respondent No.5 were procured and they were detected at Safidon from 4.10.2015 at 7.00 p.m. to 5.10.2015. No positive evidence to support

the allegations of abduction, inflicting injury, threatening and forcibly consumption of liquor etc. were found and the allegations were found false and frivolous. It is also in the reply that earlier the petitioner also filed a complaint for the offences under Sections 420, 406, 467, 468, 471 and 120-B IPC against respondent No.5 and one Mukesh Kumar which was later on dismissed. The petitioner is also facing trial in case under Sections 138 and 142 of the Negotiable Instruments Act filed by above Mukesh Kumar. It is also stated that calendra under Section 182 IPC against the petitioner for making false and frivolous complaint has also been prepared.

Keeping in view the reply filed by the State, on inquiry the allegations were found false. The petitioner has other alternative remedies and petition under Section 482 Cr.P.C for registration of FIR is not to be entertained in routine. In Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, the Hon'ble Supreme Court has held as under:-

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156

(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary

to its execution.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained

when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154 (3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

The law laid down in this judgment has also been relied upon by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751.

Therefore, in view of the law laid down in Sakiri Vasu v. State of U.P. and others (supra) T.C. Thangaraj v. V. Engammal and others

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(supra), this petition under Section 482 Cr.P.C. is not liable to be entertained and the same is dismissed. However, the petitioner is at liberty to avail the alternative remedy before the Magistrate etc. as held in these cases.

February 29, 2016.

(Inderjit Singh)
Judge

hsp